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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LINDA DOWNS,

Plaintiff,

3:11-cv-00885-LRH-WGC

v.

RIVER CITY GROUP, LLC, et. al.,

Defendants.

**ORDER**

Re: Remaining Downs-Wells Fargo  
Discovery Dispute

The court issues this Order with respect to the remaining discovery dispute between Plaintiff Linda Downs (Downs) and defendant Wells Fargo Bank, N.A. (Wells Fargo).<sup>1</sup>

**I. BACKGROUND**

The facts and procedural history leading up to the issuance of this Order are set forth in Judge Hicks' September 17, 2014 order (Doc. # 257)<sup>2</sup>, and the undersigned's September 24, 2014 order on remand (Doc. # 258). In accordance with the court's order on remand, Downs and Wells Fargo have submitted memoranda outlining the remaining areas of dispute concerning discovery between them. (Doc. # 265 (Downs); Docs. # 266, #266-1<sup>3</sup> (Wells Fargo).) They identified the following areas that remain in dispute: (1) Wells Fargo's alleged failure to prepare its Rule 30(b)(6) designees, including Jessica Jones (Jones) and Luann Tupa (Tupa); (2) Wells Fargo's alleged failure to produce documents identified in various Rule 30(b)(6) depositions; (3) Wells Fargo's purported deficient responses to written discovery, including interrogatories and requests for production of documents; (4) Wells Fargo's alleged failure to provide adequate privilege logs;

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<sup>1</sup> A separate order was entered concerning the remaining discovery dispute between Downs and Minnesota Life Insurance Company (Minnesota Life). (Doc. # 267.)

<sup>2</sup> Refers to court's docket number.

<sup>3</sup> Doc. # 266-1 consists of 762 pages of documents Wells Fargo represents it has produced to Downs. (See Doc. # 266 at 2-3.)

1 and (5) the alleged failure of Wells Fargo to produce documents related to the *Dollens* case. The  
 2 court will now summarize the positions of the parties and provide its analysis and direction with  
 3 respect to these remaining discovery issues.

## **II. PREPARATION OF RULE 30(b)(6) DESIGNEES**

5 Downs argues that Wells Fargo failed to adequately prepare its designated Rule 30(b)(6)  
 6 witnesses, Jones and Tupa for their depositions. (Doc. # 265 at 1-2.) Downs asserts that the  
 7 witnesses were unprepared at their first depositions that took place on November 14 and 15,  
 8 2012, and were still unprepared at their second depositions on February 1, 2013. (*Id.*)

9 Wells Fargo contends that the lack of knowledge on the part of any witness was based on  
 10 questions that were beyond the scope of the deposition notice, and when a witness did not have  
 11 answers to questions, they were supplied by another witness. (Doc. # 266 at 2.) Wells Fargo  
 12 asserts that it produced three 30(b)(6) witnesses who provided more than seventeen hours of  
 13 deposition testimony and Downs' dislike for their testimony does not mean they were  
 14 unprepared. (*Id.*)

### **A. Jones Depositions**

16 Wells Fargo designated Jones to testify regarding the following topics: (1) foreclosure  
 17 process; (b) the payment protection policy; (c) policies and procedures, internal auditing, quality  
 18 control and training; (d) loss mitigation; (e) records retention, phone logs, and technology; and  
 19 (f) miscellaneous items. (Doc. # 265 at 1-2.) Downs identifies various areas of purported  
 20 deficiency with respect to Jones' depositions.

21 First, Downs argues that Jones could not speak to and did not know the specific  
 22 guidelines Wells Fargo followed/used in this matter. (Doc. # 265 at 2.) She asserts that Paul  
 23 Goers, a Wells Fargo employee told others at Wells Fargo investigating the Downs' claim that  
 24 the "Investors and Foreclosure" group's rules governed when and if a loan could go into  
 25 foreclosure, but these rules were not disclosed by Jones or produced by Wells Fargo. (*Id.* at n. 2.)

26 In her deposition, Jones testified that Wells Fargo utilized the note, deed of trust, and  
 27 Freddie Mac guidelines in order to service the subject loan. (Doc. # 235-2 at 5-8, Feb. 1, 2013  
 28 Jones Depo. at 13-16.) Jones testified that the Freddie Mac guidelines Wells Fargo followed are

1 publicly available on Freddie Mac's website. (*Id.*) While counsel tried to ask Jones what specific  
 2 guidelines were utilized in servicing the loan, it was Jones' testimony that Wells Fargo serviced  
 3 the loan utilizing all of the Freddie Mac guidelines. (*Id.*) If Downs had a question about the use  
 4 of a specific guideline, she could have posed more specific questions, but chose not to. While  
 5 Downs now argues that some other rules were utilized in determining whether a loan could go  
 6 into foreclosure, *i.e.*, the Investor and Foreclosure group's rules, that was not Jones' testimony.  
 7 Downs does not state what other information she seeks to gain from this witness on this topic. As  
 8 such, there does not appear to be any further basis for examining this witness regarding this  
 9 issue.

10 Second, Downs claims that Jones did not know who created the timeline on WELL  
 11 1681 and could not answer questions regarding the timeline. (Doc. # 265 at 2.) Wells Fargo is  
 12 correct that Tupa testified that *she herself* created the timeline. Downs had an opportunity to  
 13 question Tupa, the author of the timeline, about the document. Therefore, there is no basis to  
 14 compel any further testimony from Jones on this subject.

15 Third, Downs contends Jones did not know anything about the Foreclosure Overview  
 16 found on WELL 1733 and did not know about prior versions of the document. (Doc. # 265 at  
 17 2.) Wells Fargo argues that Jones testified that Wells Fargo authored the Foreclosure Overview,  
 18 and while she did not know if there were prior versions of the document, this is immaterial as  
 19 Downs did not ask Jones any further questions about the document. (Doc. # 235 at 6.)

20 Downs' counsel did ask Jones several substantive questions about the document in her  
 21 second deposition. (*See* Doc. # 192-1 at 8, Feb. 1, 2013 Jones Depo. at 22 -29.) Downs does not  
 22 explain how this document (or any other version of it) is relevant to her remaining claims or  
 23 what else she intends to elicit from this witness concerning this document. As such, the court  
 24 finds no basis for compelling further testimony on this subject.

25 Fourth, Downs states that Jones did not know how the deed of trust was used to service  
 26 the Downs' loan. (Doc. # 265 at 2.) Again, Jones testified that the terms of the deed of trust,  
 27 along with the Freddie Mac guidelines, were used in servicing the loan. Downs does not explain  
 28 what further testimony she expects to elicit from this witness on this topic or how it is relevant to

1 her remaining claims. Accordingly, the court will not permit further examination of Jones on this  
 2 issue.

3 Finally, Downs takes issue with the fact that Jones could not answer why Wells Fargo  
 4 filed a notice of sale after it closed the foreclosure in November of 2011. (Doc. # 265 at 2.) Wells  
 5 Fargo explains that Jones and Wells Fargo would not have had this information because MTC  
 6 Financial, not Wells Fargo, executed and recorded the notice of sale. (Doc. # 235 at 7-8.) In light  
 7 of this, the court agrees that Downs should have obtained this information from MTC Financial,  
 8 and not Wells Fargo.

#### 9 **B. Tupa Depositions**

10 Tupa was designated to testify regarding communications with Minnesota Life. (Doc. #  
 11 265 at 2.) Downs identifies several ways in which Tupa was allegedly unprepared.

12 First, Downs asserts that Tupa did not know what timeline Paul Goers was referencing  
 13 with regards to the timeline provided by Optional Services (Tupa's department). (Doc. # 265 at  
 14 2.) This is belied by Tupa's own testimony, where she stated that she believed that WELL 1681  
 15 is the timeline that she created and sent in the email to Paul Goers, which Goers discussed in his  
 16 email at WELL 538. (Doc. # 235-1 at 5, Feb. 1, 2013 Tupa Depo. at 7:3-17.) Therefore, there is  
 17 no basis for compelling further examination on this topic.

18 Second, Downs claims that Tupa did not know why some of the Minnesota Life  
 19 payments were sent back to Downs. (Doc. # 265 at 2.) Wells Fargo points out that Jones testified  
 20 extensively on this topic. (Doc. # 235 at 8.) It is true that Jones was questioned and did provide  
 21 some testimony on this topic. (*See, e.g.*, Doc. # 110-4 at 16-17, Nov. 14, 2012 Jones Depo. at  
 22 254-260.) At Jones' November 14, 2012 deposition Wells Fargo's counsel did represent that Tupa  
 23 would testify as to the process Wells Fargo may have had in place at the time the payments were  
 24 received from Minnesota Life. (*Id.*, Jones Depo. at 260:3-11.)

25 Tupa testified that the foreclosure department sent funds back to the mortgagor that were  
 26 the claim check funds, and when she was asked why they sent the payments back, Tupa testified  
 27 that it was done by the foreclosure department and that question would have to be posed to them.  
 28 (Doc. # 110-6 at 28, Nov. 15, 2012 Tupa Depo. at 104:5-16.) After receiving this response,

1 counsel moved on from this line of questioning. (*Id.*) Later in the deposition, the discussion  
 2 returned to this topic. Tupa testified regarding application of the funds: "Our department  
 3 received the check, sent the funds to Cash, asked them to make the mortgage payments. They  
 4 and Foreclosure had processes that they need to follow. I believe those funds were sent back to  
 5 the mortgagor." (Doc. # 110-7 at 3, Nov. 15, 2012 Tupa Depo. at 134:1-7.) She was then asked  
 6 why the funds were sent back to the mortgagor, and testified again that question would have to  
 7 be addressed with the foreclosure department. (*Id.* at 134:8-14.) When counsel asked whether  
 8 there would be another Rule 30(b)(6) witness to testify as to this issue, Wells Fargo's counsel  
 9 indicated that the Rule 30(b)(6) witness who would testify as to that topic was Jones, who had  
 10 testified the day before. (*Id.* at 134:15-18.) Downs' counsel then moved on to another line of  
 11 questioning. Tupa was asked this same question later on in the deposition, and responded,  
 12 consistent with her previous responses, that Downs would have to ask the foreclosure department  
 13 why payments were returned to Downs. (*Id.* at 231:19-25, 234:25-235:6.)

14 Downs then deposed both Jones (who was designated as to foreclosure issues) and Tupa  
 15 again in February 2013. In her second deposition, Jones testified that some funds received from  
 16 Minnesota Life were returned (and not applied to the loan). (Doc. # 192-1 at 20, Feb. 1, 2013  
 17 Jones Depo. at 72:6-10, 17-21.) Downs' counsel was afforded the opportunity to ask Jones, who  
 18 had been designated on the topic of foreclosure, and identified by Tupa as the person who would  
 19 have knowledge on this topic, why the payments were sent back to Downs. Downs' counsel did  
 20 not do so. In light of this, the court is not inclined to allow further examination on this topic.

21 **III. DOCUMENTS IDENTIFIED DURING RULE 30(b)(6) DEPOSITIONS BUT NOT**  
 22 **PRODUCED**

23 Downs contends that various documents were identified or referenced in the Rule  
 24 30(b)(6) depositions, but were not produced by Wells Fargo, including the following:  
 25 (1) "OQM" e-mail of the "5-10" notes to Wells Fargo employee "M. Thomas"; (2) e-mails and  
 26 attachments to and from Tupa and Jones; (3) e-mails and letter logs and collection notes  
 27 referenced in Jones' deposition; (4) evidence of the "corrupted phone call" between Downs and  
 28

1       Wells Fargo<sup>4</sup>; (5) the checks/correspondence sent to "Cash", including e-mails and  
 2 correspondence included with those reports as referenced in Tupa's deposition; (6) the "P112  
 3 Report" along with related correspondence; (7) the Optional Product Payment Reports and  
 4 Optional Product Maintenance Reports; (8) documentation of discussions had regarding the  
 5 "process gap"; (9) e-mails to and from Shannon Eckert and Renee Biernat with attached copies  
 6 of the direct mail kit previously used for the "Secure 12" product and other materials and  
 7 information related to this including a master confidentiality agreement; (10) the exact e-mail kit  
 8 sent to Downs. (Doc. # 265 at 3.)<sup>5</sup>

9           Wells Fargo asserts that it has produced all of the documents Downs contends have not  
 10 been produced, or has withheld them on privilege grounds. (Doc. # 266 at 2-3.) Wells Fargo has  
 11 provided a table listing categories of documents either produced or withheld on privilege  
 12 grounds, and has attached an exhibit consisting of 762 pages of documents it has produced. (Doc.  
 13 # 266 at 2-3; Doc. # 266-1.) The court notes that Wells Fargo's memorandum indicates that the  
 14 documents regarding the "process gap" and post-litigation e-mail communications between Jones  
 15 and Tupa and Shannon Eckert and Renee Biernat are privileged, and will be covered in a  
 16 supplemental privilege log. (Doc. # 266 at 3.)

17           Downs is directed to provide a statement to the court within the timeframe prescribed  
 18 below addressing whether this issue has been resolved, and what documents, if any, remain to be  
 19 produced. Prior to submitting this statement, if any areas of dispute remain, the parties are  
 20 directed to engage in a meaningful meet and confer to attempt to resolve the dispute.

#### 21                          **IV. INTERROGATORIES**

22           Downs claims that Wells Fargo failed to respond to interrogatories 10, 12 and 18. (Doc.  
 23 # 265 at 4.)

24           Wells Fargo argues that Downs' assertion that Wells Fargo did not respond to

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25  
 26                          <sup>4</sup> According to Downs, Wells Fargo has represented that this document would be  
 27 produced, but had not been as of the date of the filing of her memorandum. (Doc. # 265 at 3 n.  
 3.)

28                          <sup>5</sup> There were additional items identified by Downs (timeline Debra Douglas prepared on  
 behalf of Wells Fargo, e-mail and attached timeline from Tupa to Goers, and "Optional Product  
 Check" spreadsheet) that Wells Fargo has since produced. (See Doc. # 265 at 3 n. 4, n. 5, n. 6.)

1 interrogatories 10, 12, and 18 is incorrect, and in reality, Downs simply does not like the  
 2 responses received. (Doc. # 266 at 3.)

3 Interrogatory 10 asks Wells Fargo to: "State whether the federal government has a  
 4 financial interest in the Note by way of underwriting, guarantee, indemnification or ownership."  
 5 (Doc. # 192-4 at 8.) Wells Fargo responded:

6 Objection- this interrogatory requests information that is not reasonably  
 7 calculated to lead to discovery of admissible evidence. Wells Fargo also objects to  
 8 this interrogatory as vague and ambiguous because it is not clear what plaintiff  
 9 means by "the federal government" or "a financial interest in the Note by way of  
 10 underwriting, guarantee, indemnification or ownership."

11 Subject to and without waiving these objections, Wells Fargo states that  
 12 the Federal Home Loan Mortgage Corporation is the investor for the loan the  
 13 Note evidences.

14 Discovery is continuing, and Wells Fargo reserves the right to supplement  
 15 this response in the event that further relevant facts become available.

16 (Doc. # 192-4 at 8.)

17 In her prior motion to compel, Downs argued: "[Wells Fargo has failed to describe the  
 18 Federal Home Loan Mortgage Corporation's interest in the "Note." Merely stating that it is an  
 19 investor means nothing.]" (Doc. # 222 at 6.) Wells Fargo contends that this response clearly  
 20 discloses that Freddie Mac is the owner of the loan. (Doc. # 235 at 9.) The response says that  
 21 "the Federal Home Loan Mortgage Corporation is the investor for the loan," but does not state  
 22 that it owns the loan. Wells Fargo shall supplement its response to Interrogatory 10 to reflect its  
 23 representation that Freddie Mac is the owner of the loan (as stated in Doc. # 235 at 9).

24 Interrogatory 12 asks Wells Fargo to: "State all state and federal pre-suit default  
 25 prevention procedures you undertook prior to this action." (Doc. # 192-4 at 8.) Wells Fargo  
 26 responded:

27 Objection - this interrogatory requests information that is not reasonably  
 28 calculated to lead to discovery of admissible evidence. This interrogatory is also  
 29 vague and ambiguous, particularly because it is not clear what plaintiff means by  
 30 "state and federal pre-suit default prevention procedures."

31 Subject to and without waiving these objections, Wells Fargo states that it  
 32 is the borrower's responsibility to avoid default.

33 Discovery is continuing, and Wells Fargo reserves the right to supplement  
 34 this response in the event that further relevant facts become available.

35 (Doc. # 192-4 at 8.)

36 This response does not answer the question posed. Wells Fargo shall supplement its  
 37 response to Interrogatory 12. If Wells Fargo is not clear as to what type of state and federal pre-

1 suit default prevention procedures Downs is referring to, it shall meet and confer with Downs to  
 2 clarify what she means.

3 Interrogatory 18 asks Wells Fargo to: "State the relationship between Wells Fargo and  
 4 Minnesota Life Insurance Company, including when the relationship began and ended." (Doc.  
 5 # 192-4 at 13.) Wells Fargo responded:

6 Objection - this interrogatory requests information that is not reasonably  
 7 calculated to lead to discovery of admissible evidence. This interrogatory is also  
 8 vague and ambiguous, particularly because it is not clear what plaintiff means by  
 9 "the relationship between Wells Fargo and Minnesota Life Insurance Company." In  
 addition, this interrogatory calls for information that is protected by the  
 attorney-client privilege and/or the attorney work product doctrine. Wells Fargo  
 also objects to this interrogatory because it is compound, overbroad and unduly  
 burdensome.

10 Subject to and without waiving these objections, Minnesota Life  
 11 underwrote a group monthly benefit mortgage life insurance policy for Wells  
 12 Fargo. The group policy number is 400752-G.

13 Discovery is continuing, and Wells Fargo reserves the right to supplement  
 14 this response in the event that further relevant facts become available.

15 (Doc. # 192-4 at 14.)

16 Wells Fargo gives an adequate description of its relationship with Minnesota Life, but the  
 17 response is incomplete because it does not state when its relationship with Minnesota Life began  
 18 and ended. Wells Fargo shall supplement its response to Interrogatory 18 to provide this  
 19 information.

#### **V. REQUESTS FOR PRODUCTION OF DOCUMENTS**

20 As to the requests for production of documents, Downs contends Wells Fargo's responses  
 21 to the following requests are deficient: 1, 2, 6, 8, 9, 10, 15, 16, 17, 20, 21, 22, 24, 25, 26, 27, 28,  
 22 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 45, 46, 47, 48, 51, 52, 53, 54, 55, 56, 61, 63,  
 64, 65, 66, 68, 70, 71, 72 and 75. (Doc. # 265 at 4-9.)

#### **A. Preliminary Findings**

23 The requests and their responses can be found in Doc. # 192-5, and requests 1, 2, 6, 8, 9,  
 24 10, 15, 16, 17, 20, 21, 22, 24-33 (those for which Downs provides a specific argument), are  
 25 repeated here for convenience and reference in the discussion. Preliminarily, the court finds that  
 26 Wells Fargo's reference to the universe of documents it has produced in response to a particular  
 27 request is insufficient. Federal Rule of Civil Procedure 34(b)(2)(E)(i) states that documents must  
 28 be produced "as they are kept in the usual course of business or [the responding party] must

1 organize and label them to correspond to the categories in the request[.]" "This rule 'is meant to  
 2 prevent a party from obscuring the significance of documents by giving some structure to the  
 3 production." *American General Life Ins. Co. v. Vistana Condominium Owners Ass'n*, 2014 WL  
 4 2041950 (D. Nev. May 16, 2014) (quoting *City of Colton v. Am. Promotional Events, Inc.*, 277  
 5 F.R.D. 578, 584 (C.D. Cal. 2011)). "Therefore, the production must be rationally organized to  
 6 enable the parties to determine if responsive documents have been produced." *Id.*

7 The court has not been provided information as to whether Wells Fargo produced its  
 8 documents as they are kept in the ordinary course of business; however, Wells Fargo's responses  
 9 that refer to nearly 3000 documents produced do nothing to aid Downs in determining which  
 10 documents are responsive to a particular request, and therefore, whether or not the production is  
 11 sufficient. While Wells Fargo contends that it had an agreement with Downs to respond in this  
 12 manner, it has provided no evidence of such an agreement, which Downs' obviously disputes. As  
 13 such, the responses shall be supplemented to identify specific documents, by bates label, that are  
 14 responsive to each request. The court will now address the requests for which Downs has  
 15 provided specific arguments regarding the deficiency of Wells Fargo's responses.

16 **B. Requests 1, 2, 6, 8-10, 15-17, 20-22, 24, 28, 33**

17 **Request 1:** All contracts and agreements between Wells Fargo and any person or entity  
 18 regarding the servicing of the applicable deed of trust and/or note at issue in this matter.

19 **Response to Request 1:** Objection - this Request is not reasonably calculated to lead to the  
 20 discovery of admissible evidence. This Request is also overly broad and unduly burdensome  
 21 because, *inter alia*, it is not limited to a specific time frame. Wells Fargo also objects to this  
 22 Request to the extent it implies that deeds of trust are serviced.

23 Without waiving these objections, Wells Fargo services the loan for Freddie Mac. Wells  
 24 Fargo states that the servicing guidelines are equally available to plaintiff and Wells Fargo, and  
 25 that they are publicly available at [www.freddiemac.com](http://www.freddiemac.com). The Freddie Mac guidelines are  
 26 judicially noticeable pursuant to FRE 201, and self-authenticating pursuant to FRE 902(5). Wells  
 27 Fargo intends to rely on these materials at trial.

28 Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

**Discussion:**

25 Downs argues that Wells Fargo has not provided any contract/agreement between it and  
 26 any person/entity regarding the servicing of the applicable deed of trust and/or note at issue.  
 27 Wells Fargo's response merely points to the Freddie Mac guidelines but does not indicate  
 28 whether a contract or agreement exists with respect to the servicing of the loan for Freddie Mac

1 by Wells Fargo. Wells Fargo shall supplement its response to clarify whether such an agreement  
2 or contract exists, and if it does, shall produce any such document(s).

3 **Request 2:** All contracts and agreements between Wells Fargo and Minnesota Life Insurance  
4 Company.

5 **Response to Request 2:** Objection- this Request is not reasonably calculated to lead to the  
discovery of admissible evidence. This Request is also overly broad and unduly burdensome  
6 because, *inter alia*, it is not limited to a specific time frame and because it requests "all contracts  
7 and agreements between Wells Fargo and Minnesota Life Insurance Company," regardless of  
whether those contracts and agreements relate to this lawsuit, plaintiff, or the loan at issue. This  
Request is also improper because Wells Fargo's contracts and agreements are proprietary and  
may contain confidential information.

8 Without waiving these objections, *see* WELLS 00001-WELLS 002975.

9 Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

10 **Discussion:**

11 The objection that the request is overbroad is sustained as it is true that the request is not  
12 limited in scope to documents that may be relevant to Downs' insurance policy or her loan.  
13 Limiting the request as such, Wells Fargo shall specifically identify any relevant agreements  
14 between it and Minnesota Life which have been produced. Pointing to the universe of documents  
15 produced in this action is insufficient. In addition, if the relevant document(s) have not been  
16 produced, they shall be produced in accordance with this Order.

17 **Request 6:** All original and intervening Assignments showing a complete chain of assignments  
from the originator to the person assigning the deed of trust and note to Wells Fargo.

18 **Response to Request 6:** Objection - this Request is not reasonably calculated to lead to the  
discovery of admissible evidence. This Request is also vague and ambiguous, particularly since  
19 plaintiff does not define "originator" or "deed of trust." Wells Fargo also objects to this Request  
to the extent it implies that notes are "assigned" rather than indorsed.

20 Without waiving these objections, *see* WELLS 00001-WELLS 002975.

21 Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

22 **Discussion:**

23 The objections are overruled as it is clear that Downs is seeking documentation  
24 concerning the assignment or indorsement of the deed of trust from its inception forward. Wells  
25 Fargo shall produce such documentation, if it has not done so already, and shall point Downs to  
26 the specific bates labels of the responsive documents.

27 **Request 8:** All correspondence by and between Wells Fargo and either of the Plaintiffs to this  
action.

28 **Response to Request 8:** Objection - this Request is not reasonably calculated to lead to the  
discovery of admissible evidence. This Request is also overly broad and unduly burdensome

1 because it is not limited to a specific time frame. This Request is also overly broad and unduly  
2 burdensome because, *inter alia*, it requests "all correspondence by and between Wells Fargo and  
3 either of the Plaintiffs to this action," regardless of whether that correspondence relates to this  
lawsuit or the loan at issue. Wells Fargo also objects to this Request to the extent it implies there  
is more than one plaintiff in this lawsuit. Wells Fargo further objects to this Request as  
duplicative of, *inter alia*, Request No. 5.

4 Without waiving these objections, *see* WELLS 00001-WELLS 002975.  
Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

5 **Discussion:**

6 This request shall be limited to all correspondence by and between Wells Fargo and  
7 plaintiff Downs or her husband that is related to this lawsuit or the loan at issue. Wells Fargo  
8 shall produce these documents, if it has not done so already, and shall supplement its response to  
9 reflect the bates labels of the responsive documents.

10  
11 **Request 9:** All correspondence by and between Wells Fargo and any Defendant to this action  
with regard to the subject mortgage loan.

12 **Response to Request 9:**

13 Objection- this Request is not reasonably calculated to lead to the discovery of admissible  
evidence. This Request is also overly broad and unduly burdensome because, *inter alia*, it is not  
14 limited to a specific time frame. This Request is also vague and ambiguous, particularly because  
it is not clear what plaintiff means by "mortgage loan." Wells Fargo further objects to this  
Request as duplicative of, *inter alia*, Request No. 5.

15 Without waiving these objections, *see* WELLS 00001-WELLS 002975.  
Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

16 **Discussion:**

17 The objections are overruled. Wells Fargo shall produce all correspondence between it  
18 and any defendant to this action related to the subject loan, and shall supplement its response to  
19 specify the bates labels of the responsive documents.

20  
21 **Request 10:** All sales contracts, servicing agreements, assignments, allonges, transfers,  
indemnification agreements, recourse agreements and any agreement related to this account from  
the inception of this account to the present date.

22 **Response to Request 10:**

23 Objection - this Request is not reasonably calculated to lead to the discovery of  
admissible evidence. This Request is also overly broad and unduly burdensome because, *inter alia*, it requests "all sales contracts, servicing agreements ...," including agreements that have no  
24 bearing on this case. This Request is also vague and ambiguous, particularly since it is not clear  
what plaintiff means by "account," "sales contracts ... related to this account," "transfers ...  
related to this account," "indemnification agreements ... related to this account," or "recourse  
agreements ... related to this account."

25 Without waiving these objections, *see* WELLS 00001-WELLS002975. In addition, Wells  
26 Fargo services the loan for Freddie Mac. Wells Fargo states that the servicing guidelines are  
27 equally available to plaintiff and Wells Fargo, and that they are publicly available at  
[www.freddiemac.com](http://www.freddiemac.com). The Freddie Mac guidelines are judicially noticeable pursuant to FRE  
28 201 and self-authenticating pursuant to FRE 902(5). Wells Fargo intends to rely on these

1 materials at trial.

2 Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

2 **Discussion:**

3 The request is self-limiting to documents related to "this account" which can reasonably  
4 be interpreted as the loan account that is the subject of this litigation. The request is otherwise  
5 perfectly clear, and Wells Fargo shall produce responsive documents if it has not done so  
6 already, and shall supplement its response to identify responsive documents by bates label. It is  
7 not required to produce the Freddie Mac guidelines, which the court recognizes are publicly  
8 available.

9 **Request 15:** The Investor Loss Mitigation and Loan Modification Guidelines related to  
10 Plaintiffs' mortgage loan.

10 **Response to Request 15:**

11 Objection - this Request is not reasonably calculated to lead to the discovery of  
12 admissible evidence. This Request is also overly broad and unduly burdensome because, *inter*  
13 *alia*, it is not limited to a specific time frame and because it requests all "Investor Loss  
14 Mitigation and Loan Modification Guidelines," regardless of whether plaintiff applied for that  
particular loss mitigation program. This Request is also vague and ambiguous, particularly since  
it is not clear what plaintiff means by "Investor Loss Mitigation and Loan Modification  
Guidelines related to Plaintiff's mortgage loan." This request is also improper because it seeks  
information to which plaintiff and Wells Fargo have equal access.

15 Without waiving these objections, Wells Fargo services the loan for Freddie Mac. Wells  
16 Fargo states that the loss mitigation and loan modification guidelines are equally available to  
plaintiff and Wells Fargo, and that they are publicly available at [www.freddiemac.com](http://www.freddiemac.com). The  
17 Freddie Mac guidelines are judicially noticeable pursuant to FRE 201 and self-authenticating  
pursuant to FRE 902(5). Wells Fargo intends to rely on these materials at trial.

17 Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

18 **Discussion:**

19 This request is also self-limiting to those documents that are related to Downs' loan.  
20 Wells Fargo shall supplement its response to clarify whether the Freddie Mac guidelines  
21 referenced are the only responsive documents to this request. If so, it need not produce any  
22 additional documentation. If there are additional responsive documents, they shall be produced in  
23 accordance with this Order.

24 **Request 16:** All documents recording, reflecting or otherwise relating to visits which Wells  
25 Fargo or YOUR agents made to the Subject Property.

25 **Response to Request 16:**

26 Objection - this Request is not reasonably calculated to lead to the discovery of  
27 admissible evidence. This Request is also overly broad and unduly burdensome because, *inter*  
28 *alia*, it is not limited to a specific time frame. This Request is also vague and ambiguous,  
particularly since it is not clear what plaintiff means by "Subject Property." Wells Fargo also  
objects to this Request because it requests documents that are not in Wells Fargo's possession or  
control.

Without waiving these objections, *see* WELLS 00001-WELLS 002975.  
Discovery is ongoing and Wells Fargo reserves the right to supplement its response.

**Discussion:**

Wells Fargo shall supplement its response to reflect what documents in its possession, custody or control were produced that are responsive to this request, identifying the documents by specific bates label.

**Request 17:** All accounting servicing transaction records, ledgers, registers and similar items detailing how Plaintiff's account has been serviced from the inception of the account to the present date.

**Response to Request 17:**

Objection - this Request is not reasonably calculated to lead to the discovery of admissible evidence. This Request is also vague and ambiguous, particularly since it is not clear what Plaintiff means by "items detailing how Plaintiff's account has been serviced from the inception of the account to the present date." This Request is also overly broad and unduly burdensome.

Without waiving these objections, *see* WELLS 00001-WELLS 002975.

Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

**Discussion:**

Wells Fargo's objections are overruled as baseless. The request is sufficiently clear, and Wells Fargo gives no indication as to how it is overly broad or unduly burdensome. Wells Fargo shall supplement its response to identify, by bates label, the specific documents it has produced that are responsive to this request.

**Request 20:** Each and every canceled check, money order, draft, debit or credit notice issued to any servicers of Plaintiffs' account for paying of any monthly payment, other payment, escrow charge, fee or expense on the account.

**Response to Request 20:**

Objection - this Request is not reasonably calculated to lead to the discovery of admissible evidence. This Request is also overly broad and unduly burdensome because, *inter alia*, it is not limited to a specific time frame. This Request is also vague and ambiguous, particularly since it is not clear what plaintiff means by "Plaintiffs' account." This Request also calls for documents that are not within Wells Fargo's possession or control. Wells Fargo also objects to this Request to the extent it implies there is more than one plaintiff in this action.

Without waiving these objections, *see* WELLS 00001-WELLS002975.

Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

**Discussion:**

Wells Fargo's objections are overruled, except that Wells Fargo is only required to produce documents in its possession, custody or control. Wells Fargo shall supplement its response to identify the responsive documents by bates label.

**Request 21:** All data, information, notations, text, figures and information contained in your mortgage and accounting computer systems including, but not limited to Alltel or Fidelity CPI

1 system, or any other similar mortgage servicing software used by you, any servicers, or sub-  
2 servicers of Plaintiffs' mortgage account from the inception of Plaintiffs' account to the present  
date.

3 **Response to Request 21:**

4 Objection - this Request is not reasonably calculated to lead to the discovery of admissible  
evidence. This Request is also overly broad and unduly burdensome because, *inter alia*, it  
5 requests "all data, information, notations ...," regardless of whether the data, information,  
notations, texts, figures, and information refer to plaintiff, the loan at issue, or the property at  
issue. This Request is also vague and ambiguous, particularly because it is not clear what  
6 Plaintiff means by "data, information, notations ..." Wells Fargo also objects to this Request  
because it seeks documents that are not in Wells Fargo's possession or control.

7 Without waiving these objections, *see* WELLS 00001-WELLS002975.

8 Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

9 **Discussion:**

10 The court agrees that it is not clear exactly what Downs is seeking via this request, and it  
11 appears it may seek documentation or information that is not related to this action. The parties  
shall meet and confer to determine what exactly it is that Downs seeks to obtain in this request  
12 and see if an informal resolution can be reached.

13 **Request 22:** All descriptions and legends for all Codes used in YOUR mortgage servicing and  
accounting system so as to enable the examiners and auditors and experts retained to audit and  
review this mortgage account to properly carry on their work.

14 **Response to Request 22:**

15 Objection - this Request is not reasonably calculated to lead to the discovery of  
admissible evidence. This Request also calls for documents that are not within Wells Fargo's  
possession or control and/or documents that are confidential and proprietary. This Request is also  
16 overly broad and unduly burdensome.

17 Without waiving these objections, *see* WELLS 00001-WELLS002975.

18 Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

19 **Discussion:**

20 The parties shall meet and confer and discuss whether any specific documents have been  
21 produced in response to this request, and determine whether any additional codes need to be  
provided to allow Downs or any expert to adequately analyze the documents produced in this  
22 action. If documents are confidential or proprietary, it should be discussed whether they can be  
viewed subject to a confidentiality agreement to alleviate any concerns about disclosure.

23  
24 **Request 24:** All records for any custodial accounts used for any purpose in connection with  
Plaintiff's mortgage loan including the date, amount and source of all deposits in such accounts  
and their date, amount and purpose for all disbursements including the name and address of any  
party who received any such disbursement.

25 **Response to Request 24:**

26 Objection - this Request is not reasonably calculated to lead to the discovery of  
admissible evidence. This Request is also vague and ambiguous, particularly because it is not  
clear what plaintiff means by "custodial accounts." This Request is also overly broad and unduly  
burdensome."

27 Without waiving these objections, *see* WELLS 00001-WELLS02975.

1           Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

2           **Discussion:**

3           Wells Fargo's objections are overruled. Wells Fargo shall supplement its response to  
4           identify, by bates label, the specific documents that are responsive to this request.

5           **Request 28:** All collection notes, reports, memos, statements, entries, data records, computer  
6           records, daily records, calendar reports, default reports, collection contacts, collection reports or  
7           other documents generated in connection with the servicing of Plaintiff's mortgage loan.

8           **Response to Request 28:**

9           Objection - this Request is not reasonably calculated to lead to the discovery of  
10          admissible evidence. This Request is also overly broad and unduly burdensome because, *inter*  
11          *alia*, it is not limited to a specific time frame and because it requests "all collection notes,  
12          reports, memos ...," regardless of whether the [documents] are related to the issues in this  
13          lawsuit. Wells Fargo also objects to this Request because it seeks documents that are not in  
14          Wells Fargo's possession or control. Wells Fargo further objects to this Request as vague and  
15          ambiguous, particularly because it is not clear what plaintiff means by "collection notes, reports  
16          ..."

17           Without waiving these objections, *see* WELLS 00001-WELLS002975.

18           Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

19           **Discussion:**

20           Wells Fargo's objections are overruled. Wells Fargo is ordered to supplement its response  
21          to identify, by bates label, documents produced that are responsive to this request, or to produce  
22          responsive documents if they have not yet been produced that are in its possession, custody and  
23          control.

24           **Request 33:** All bills and invoices for property inspections for the Subject Property and copies  
25          of the front and back of all checks in payment thereof or all confirmed wire transfers in payment  
26          thereof.

27           **Response to Request 33:**

28           Objection - this Request is not reasonably calculated to lead to the discovery of  
29          admissible evidence. This Request is also overly broad and unduly burdensome because, *inter*  
30          *alia*, it is not limited to a specific time frame. This Request is also vague and ambiguous,  
31          particularly since it is not clear what plaintiff means by "Subject Property." Wells Fargo also  
32          objects to this Request because it requests documents that are not in Wells Fargo's possession or  
33          control.

34           Without waiving these objections, *see* WELLS 00001-WELLS002975.

35           Discovery is ongoing, and Wells Fargo reserves the right to supplement this Response.

36           **Discussion:**

37           Wells Fargo's objections are overruled. Wells Fargo is ordered to supplement its response  
38          to identify, by bates label, documents produced that are responsive to this request, or to produce  
39          responsive documents if they have not yet been produced that are in its possession, custody and  
40          control.

1           **C. Requests 25-27, 29-32, 34-40, 42, 44-48, 51-56, 61, 63-66, 68, 70-72, 75**

2           Downs provides no specific argument relative to these requests, other than to say that  
 3 Wells Fargo failed to produce documents responsive to the requests. (*See* Doc. # 109, Doc. #  
 4 191, Doc. # 222, Doc. # 265 at 6-9.)

5           The parties are directed to meet and confer in order to resolve any dispute that remains as  
 6 to these requests, and to file a statement indicating any remaining areas of dispute within the  
 7 time parameters indicated below.

8           **D. Additional Documents**

9           In addition, Downs contends that the following documents still need to be produced:  
 10 communications between Wells Fargo and Minnesota Life, including "load files," ".txt reports,"  
 11 "P309 pay history," "reports from S206 and the 216 remittance detail that the product provider  
 12 would see for the M9 plan code for product payments for UIN: HHWXHPVVVR," and other  
 13 reports and pay history described on WELLS 002098; the "LPS system" information;  
 14 information regarding an "image viewer system;" information regarding a "foreclosure referral  
 15 system;" an electronic referral from Wells Fargo to Trustee Corps; the "My Network" file  
 16 referred to on WELLS 475; the "MSP system;" Downs' information in the "LIV system;" the  
 17 "OPUS" system information; all archives not produced at Tupa's deposition; all Wells Fargo  
 18 notations of the file after receiving critical letters from Minnesota Life; the spreadsheet  
 19 "Optional" created for the checks received from Minnesota Life and spreadsheet sent to "Cash"  
 20 and related e-mails; the timeline created by Tupa; the guidelines Wells Fargo followed/used in  
 21 servicing Downs' loan. (Doc. # 265 at 9-10.)

22           Wells Fargo states that while Downs insists certain documents have not been produced,  
 23 in fact they have. (Doc. # 266 at 2.) Wells Fargo attaches a copy of documents it has produced as  
 24 Exhibit A to its memorandum. (*Id.*) Exhibit A to Wells Fargo's memorandum consists of 762  
 25 pages. (Doc. # 266-1.) Wells Fargo's memorandum also contains a table providing a general  
 26 index of these documents. (Doc. # 266 at 2-3.)

27           Downs is directed to notify the court within the time parameters set forth below whether  
 28 the production identified in Wells Fargo's memorandum resolves the issue with respect to the

1 documents Downs claims were not produced. If any deficiency remains, the parties are directed  
 2 to engage in a meaningful meet and confer effort to resolve the dispute before reporting that  
 3 court intervention is necessary.

4 **VI. PRIVILEGE LOG**

5 Downs asserts that Wells Fargo has failed to provide an adequate privilege log, and  
 6 instead has provided two deficient privilege logs. (Doc. # 265 at 11.) She claims that they cover  
 7 only a limited number of documents, and for those covered, they do not provide the identities of  
 8 the sender or recipient or even the general subject matter of the communications. (*Id.*) She  
 9 requests that Wells Fargo be required to update the logs with all requested information, and  
 10 provide a complete privilege log as to all withheld documents, including the referral to Trustee  
 11 Corps, and all documents and communications with Trustee Corps and Minnesota Life. (*Id.*)

12 Wells Fargo states that it previously agreed to supplement its privilege log, but believed  
 13 this issue became moot when Wells Fargo filed its motion for summary judgment and Downs did  
 14 not request discovery under Federal Rule of Civil Procedure 56(d). (Doc. # 266 at 4.)  
 15 Nevertheless, Wells Fargo served Downs with a supplemental privilege log on October 14, 2014.  
 16 (*Id.*)

17 Preliminarily, Downs' failure to request discovery under Rule 56(d) did not obviate Wells  
 18 Fargo's agreement to provide a supplemental privilege log, because there may be documents  
 19 identified in the log that Downs may wish to contest the validity of the privilege of for use at  
 20 trial.

21 Downs is directed to submit a statement within the time parameters set forth below  
 22 indicating whether or not she deems the supplemental privilege log (served on October 14, 2014)  
 23 to be satisfactory, and if she deems it to be unsatisfactory, outlining in specific detail those areas  
 24 she deems deficient. This statement, however, must be preceded by a sincere meet and confer  
 25 effort to resolve any remaining dispute.

26 **VII. DOLLENS CASE**

27 Downs contends that Wells Fargo should have disclosed a New Mexico case, *Dollens v.*  
 28 *Wells Fargo Bank, et. al.*, D-202-CV-2011-05295. Downs asserts that the details of the case

1       were disclosed in a March 7, 2014 USA Today newspaper article. Downs argues that the *Dollens*  
 2       case, filed on May 16, 2011, should have been disclosed under Rule 26 and in response to  
 3       Downs' request for production of documents 29, served on Wells Fargo on March 30, 2012,  
 4       which asked for:

5           All documents which relate to, refer to or evidence any and all civil actions,  
 6           adversary proceedings, arbitrations, or administrative proceedings that have been  
 7           filed against Wells Fargo at any time in the past 60 months for any alleged  
 8           misconduct related to mortgage servicing on foreclosures.

9       (Doc. # 265 at 10.) Wells Fargo did not respond to the request. (*Id.*)

10      Downs also notes that both Tupa and Shannon Eckert were designated as 30(b)(6)  
 11     witnesses in the *Dollens* case and in this case, and testified in the *Dollens* case two weeks prior  
 12     to testifying in this case, and contends that they avoided talking about the details of the *Dollens*  
 13     case. (Doc. # 265 at 10-11.) Downs contends that Wells Fargo should be compelled to disclose  
 14     the entire *Dollens* file. (*Id.*)

15      Wells Fargo argues that the *Dollens* issue is not properly before the court because it was  
 16     not raised in any of the pertinent motions to compel filed by Downs against Wells Fargo, and  
 17     was only first raised in Downs' March 31, 2014 objection to the undersigned's order denying her  
 18     most recent motion to compel. (Doc. # 266 at 1.) In addition, Wells Fargo contends that Downs  
 19     knew of the *Dollens* case in November of 2012 when Minnesota Life disclosed it in its  
 20     supplemental disclosures, yet Downs failed to request any information regarding the *Dollens*  
 21     case in discovery in this case. (*Id.*) Wells Fargo further claims that Downs withdrew request for  
 22     production 29 that would have covered the disclosure of information relative to the *Dollens* case,  
 23     and as such she waived her right to compel the *Dollens* documents. (*Id.*)

24      First, Wells Fargo is correct that the *Dollens* issue was not raised in any of the pertinent  
 25     motions to compel filed by Downs against Wells Fargo (Docs. # 109, # 191, # 222). Instead, the  
 26     argument was raised for the first time in Downs' objection to the undersigned's order denying her  
 27     most recent motion to compel against Wells Fargo. (*See Doc. # 244 at 2-10.*) While request 29  
 28     was originally referenced (only by number, and with no specific argument) in the first motion to  
 29     compel filed by Downs against Wells Fargo (Doc. # 109 at 13), it was omitted from the  
 30     subsequent motions (Doc. # 191 at 8 and Doc. # 222 at 9).

1       Second, while Downs claimed that she first became aware of the *Dollens* case through  
2 the March 7, 2014 USA Today article (*see* Doc. # 244-11 at 2), Wells Fargo is correct that  
3 Minnesota Life disclosed the case in its supplemental response to Downs' request for production  
4 of documents, served on November 7, 2012. (Doc. # 248 at 7; Doc. # 248-1 at 6 (identifying  
5 *Dollens* case).)

6       Third, the court finds that Downs did in fact withdraw request 29, which would have  
7 required disclosure of the *Dollens* case. Downs contends that she only withdrew request 29  
8 because Wells Fargo's counsel specifically represented to Downs' counsel that there were no  
9 documents responsive to that request. (Doc. # 244 at 11.) The court agrees with Wells Fargo that  
10 it is simply not plausible that Wells Fargo's counsel would make such a representation in  
11 connection with a request which asked for *all* documents relating to *all* claims made by *all*  
12 private litigants and agencies throughout the United States relative to mortgage loan servicing  
13 and foreclosure for five years. As Wells Fargo points out, if Wells Fargo answered this request as  
14 drafted, it would have resulted in the production of millions of pages of documents. (*Id.*) In  
15 addition, the fact that Downs did not re-assert an issue with respect to request 29 in her  
16 subsequent motions to compel lends credibility to Wells Fargo's position that request 29 was  
17 withdrawn.

18       Despite Minnesota Life's disclosure of *Dollens* on November 7, 2012, Downs did not  
19 seek to renew her request for production 29 as against Wells Fargo, or propound any other  
20 discovery relative to *Dollens*.

21       At the very beginning of Tupa's November 15, 2012 deposition, Downs' counsel asked  
22 Tupa whether she had ever been deposed before, to which she responded she had, two weeks  
23 prior. (Doc. # 244-7 at 3, Nov. 15, 2012 Tupa Depo. at 4:18-22.) She was asked what the  
24 deposition was regarding, and responded: "A loan for Wells Fargo Home Mortgage that included  
25 accidental death insurance." (Doc. # 244-7 at 3, Nov. 15, 2012 Tupa Depo. at 4:24-25.) She was  
26 also asked whether she had been deposed in a case "similar to this case" and she responded that  
27 she had not. ((Doc. # 244-7 at 3, Nov. 15, 2012 Tupa Depo. at 5:9-11.) Wells Fargo asserts that  
28 Downs' counsel did not explain what he meant by "similar;" therefore, Tupa's response indicates

1 that she did not understand *Dollens* to be similar. (Doc. # 248 at 8.)

2 When she was asked what she had been deposed about in the prior case, she responded:  
 3 "They were asking questions regarding our policy and procedures in regards to the claim check  
 4 that came into our department." (Doc. # 244-7 at 3, Nov. 15, 2012 Tupa Depo. at 5:12-16.) When  
 5 asked where the case was venued, she responded that she did not recall. (Doc. # 244-7 at 4, Nov.  
 6 15, 2012 Tupa Depo. at 6:3-4.) Downs' counsel then proceeded with other standard deposition  
 7 admonitions. (*Id.*) Downs' counsel did not ask her any more questions about the specific details  
 8 of that case or even if she recalled the name of the case. Downs deposed Tupa again in February  
 9 2013, and despite the *Dollens* case being disclosed by Minnesota Life on November 7, 2012, did  
 10 not ask Tupa any questions about the case.

11 Downs' counsel did ask Shannon Eckert at her January 31, 2013 deposition whether  
 12 Wells Fargo had any issues similar to the Downs' with respect to the optional product from  
 13 Minnesota Life in this case, which is known as "Secure 12." (Doc. # 244-10 at 4, Jan. 31, 2013  
 14 Eckert Depo. at 90:3-19.) She testified: "not that I'm aware of." (Doc. # 244-10 at 4, Jan. 31,  
 15 2013 Eckert Depo. at 90:23.) She also responded that she did not know whether or not Wells  
 16 Fargo had been sued by any other customers in relation to the "Secure 12" optional product.  
 17 (Doc. # 244-10 at 4, Jan. 31, 2013 Eckert Depo. at 90:24-25-91:1-7.)

18 According to Wells Fargo, the specific insurance product at issue in *Dollens* was different  
 19 from the product at issue in this case—the "Secure 12." (*See* Doc. # 244-12 at 3; Doc. # 248 at  
 20 8:15-16.) This is supported by Tupa's testimony in this case that the case involved an accidental  
 21 death insurance claim. (Doc. # 244-7 at 3, Nov. 15, 2012 Tupa Depo. at 4:24-25.) If this is the  
 22 case, Eckert's response is reasonably explained.

23 It is not entirely clear if the witnesses were purposefully being evasive in some of their  
 24 responses or if they were simply answering the specific questions posed to them, to which  
 25 Downs posed no follow up. Nevertheless, Wells Fargo is correct that the Rule 30(b)(6)  
 26 deposition notice did not contain "other litigation" as a deposition topic for these witnesses.

27 Finally, Downs contends that Federal Rule of Civil Procedure 26 required the disclosure  
 28 of *Dollens*. If Downs is asserting that the initial disclosure provision of Rule 26 requires

1 disclosure of *Dollens*, Downs is mistaken. Rule 26(a) requires a party to provide information for  
 2 individuals with discoverable information, a copy or description of all documents the party may  
 3 use to support its claims and defenses, a computation of each category of damages, and any  
 4 applicable insurance agreement. Fed. R. Civ. P. 26(a)(i)-(iv). None of these categories would  
 5 have resulted in the initial disclosure of the *Dollens* file.

6 In conclusion, the court will not compel Wells Fargo to provide documents or  
 7 information relative to the *Dollens* case because: (1) she withdrew the request for production that  
 8 would have required its disclosure; (2) she did not include other litigation as a topic for Wells  
 9 Fargo's 30(b)(6) witnesses; and (3) she failed to conduct any discovery on the topic after  
 10 Minnesota Life disclosed the case on November 7, 2012. This does not preclude Downs from  
 11 obtaining information about the case independently, and she has apparently already undertaken  
 12 efforts to do so as she has provided excerpts from deposition transcripts from *Dollens* in this  
 13 action. (See Doc. # 244-8, Doc. # 244-9.)

### VIII. CONCLUSION

15 (1) Downs' request to compel further testimony from Wells Fargo's Rule 30(b)(6)  
 16 witnesses, Jones and Tupa, is **DENIED**;

17 (2) Downs' request to compel Wells Fargo to provide supplemental responses to  
 18 interrogatories 10, 12 and 18 is **GRANTED** as set forth herein; supplemental responses shall be  
 19 provided **WITHIN TWENTY-ONE DAYS OF THE DATE OF THIS ORDER**;

20 (3) Downs' request to compel Wells Fargo to provide supplemental responses to her  
 21 requests for production of documents is **GRANTED** insofar as Wells Fargo shall supplement its  
 22 responses to requests for production that identify the universe of documents by identifying  
 23 specific documents responsive to each request by bates label and Wells Fargo shall supplement  
 24 its responses to specific requests for production of documents (requests 1, 2, 6, 8, 9, 10, 15, 16,  
 25 17, 20, 21 (meet and confer), 22 (meet and confer), 24, and 28) as set forth herein; supplemental  
 26 responses shall be provided **WITHIN TWENTY-ONE DAYS OF THE DATE OF THIS**  
 27 **ORDER**; if Downs has further issues with these supplemental responses, a good faith meet and  
 28 confer effort shall be undertaken before the filing of any additional motion on this topic;

(4) Downs' request to compel documents and information related to the *Dollens* case is **DENIED**:

(5) **WITHIN TWENTY-ONE DAYS OF THE DATE OF THIS ORDER**, Downs and Wells Fargo shall engage in a sincere and meaningful effort to resolve any remaining areas of dispute, and submit a joint statement which outlines any remaining areas of dispute and sets forth the parties respective position on such issues. The statement shall addresses, at a minimum:

(a) Whether any issue remains as to the production of documents identified or referenced in Wells Fargo's Rule 30(b)(6) depositions;

14 | IT IS SO ORDERED.

15 | Dated: October 27, 2014.

William J. Cobb

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**WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE**